COCHIN LEGISLATIVE COUNCIL PROCEEDINGS

OFFICIAL REPORT OF THE BUDGET SESSION, 1122

Monday, *the* *28th July 1947* / *12th Karkadagam 1122*

The Council met in the Council Hall, Ernakulam at half-past Eleven of the Clock with the Hon'ble President (Sri L. M. Pylee, M.A.,B.L.) in the Chair.

Messrs. C. N. Ittiravi Nambudiri, S. P. Luiz, M. Sivarama Menon, Rao Bahadur T. S. Narayana Ayyar and Mrs. Dhakshayani Velayudhan were absent.

1. Point of order—Regarding that the House is not properly constituted

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: Sir, I rise on a point of parliamentary enquiry and wish to know from the Hon'ble Chair whether according to him the House is properly constituted just at present.

Mr. President: What is the ground for the Hon'ble Member to think otherwise?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: Why I say so, Sir, is namely that the House is not properly constituted is that the House contains two gentlemen seated on members' seats who are not members of this House according to the decision of our Honourable High Court. It is therefore that I rise on this enquiry to ascertain whether according to the Hon'ble Chair, the House is properly constituted, that is, whether persons who cannot sit in this Council are here according to him. According to me there are two such persons, two gentlemen, who cannot sit in this Council occupying members' seats.

Mr. President: Will the Hon'ble Member please state who are the Members he is referring to?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: The two gentlemen, to whom I refer, Sir,—I refuse to call them Hon'ble Members—are Messrs. Panampilly Govinda Menon and V. R. Krishnan Ezhuthassan.

Mr. President: Does the Hon'ble Member say that there has been a judgment against them by the High Court? Is that his contention?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: No, Sir. The judgment by the High Court is not against the individual persons Messrs. Panampilly Govinda Menon and V. R. Krishnan Ezhuthassan, but against persons belonging to that category. I shall further explain. By 'that category', I mean Sir, that persons who have been found guilty of corrupt practices of a high order as the ones that have been found to have been committed by these gentlemen—similar persons have been held in that High Court decision to which I referred to, to be persons who have, by reason of such mal-practices, indulged in at the time of election, been found to have lost their seats and therefore, not entitled to sit in the Council.

Mr. President: I understand the Hon'ble Member's point. Has not this identical question been raised once before and decided?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: On that query I submit, Sir, that there was a decision by the polling officer who conducted the election of the Hon'ble President on the 2nd of Medam 1122.

Mr. President: By the House?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: No, Sir. This point was raised when the voting for the election of the President of this House, your esteemed self, was gone through. After that was done, my friend, the Leader of the Opposition, raised a point of order and said that the two votes that he saw actually being registered by these two gentlemen whom I mentioned earlier should not be taken into account. He said Sir, that two votes must be excluded and only others can be considered as valid votes polled. The polling officer of the day, not the President of the Legislative Council, the polling officer, which alone he was according to the amendment in the Constitution Act of Cochin, made for the purpose, decided

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[Mr. P. Kumaran Ezhuthassan]

that they can take part in the voting. Now, my point of enquiry is on the fundamental principle of the question of regular constitution of a Council.

Mr. President: How is it that the Hon'ble Member did not raise the pont then, if it was the polling officer who gave the decision in that sitting? I am only asking for elucidation.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I did not raise the point that afternoon when you were seated in the Chair, simply for the reason that in the immediate following of that decision by the polling officer, I did not want to put our first elected President of the Council your good self, to difficulties by having to rule on that question in the almost immediate halo of a decision which I consider I can question at any time. I can question the ruling of a polling officer wnich was not properly given at any time. It was a sort of delicacy, I thought, Sir, which the Hon'ble President of that afternoon may feel and therefore out of consideration for him, our own President, Sir, I did not raise it then. That does not amount to waiver. Even if it amounts to a waiver, it does not apply to the present inquiry.

Mr. President: Even after that, was not this point raised a second time?

Rao Sahib A. Madhava Prabhu *(Chief Secretary to Govenment):* It did come. That is my recollection.

Mr. President: If I remember right, when a question was being put to one of the Hon'ble Ministers, the point was raised, viz., that he was not a Member of the House, and then it was ruled by me, if I remember right, that he was a Member of the House.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* It was about Mr. Iyyunni Sir, that I raised a point of order namely that he is not a Minister, competent to answer a question as a Minister and the Hon'ble President gave the ruling that Mr. Iyyunni was a Minister.

Mr. Paul P. Mampilli *(Advocae-General):* The same question was raised with regard to the Hon'ble Minister for Food.

Mr. President: Who are the Hon'ble Members to whom you are alluding now?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Messrs. Panampilly Govinda Menon, and V. R. Krishnan Ezhuthassan, Sir.

Mr. P. Govinda Menon *(Minister for Food and Education):* Why doyou call me Messrs.?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I beg pardon Sir, if my esteemed friend is so touchy I shall, Sir, call M.R.Ry., Panampilly Govinda Menon Avl., M.A., B.L.

Mr. President: Has the Advocate-General anything to say about this?

Mr. Paul P. Mampilli *(Advocate-General):* Sir, the objection raised that there is a decision of the Hon'ble High Court disqualifying the Hon'ble Members to sit in this House....

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I never said that, Sir.

Mr. Paul P. Mampilli *(Advocate-General):* ....disqualifying in general terms. There is no High Court decision in general terms disqualifying these Hon'ble Members to sit as Members of this House. My learned friend seems to be referring to the decision reported in 34 Cochin 893.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Yes, Sir, the identical ruling.

Mr. Paul P. Mampilli *(Advocate-General):* The Hon'ble Member raises the point of order on the ground that there is a decision of the High Court which disqualifies these Hon'ble Members from being the members of the Council. I believe he refers to the decision reported in 34 Cochin Law Reports page 893. That decision does not lay down that any member is disqualified to sit in the Council. The purport of the decision I will briefly state. There was an election in 1113 in which Mr. Kannu Pillai and Mr. Salem stood as candidates. Mr. Kannu Pillai became successful and in that election matter, Mr. Salem filed an election petition as election petition 1/1113. The Commissioners who were appointed to enquire into the matter found that there were certain corrupt practices committed by certain agent of Mr. Kannu Pillai and on account of that the election was set aside. The Report of the Commissioners was accepted by the Government and a re-election was ordered. In that election also, Mr. Salem and Mr. Kannu Pillai stood as candidates and Mr. Kannu Pillai was successful. A voter of that constituency filed a petition to set aside the election. The election petition was enquired into as election petition 1/1114. In their report on that petition the Commissioners found that in the report on the election petition 1/1113, the Commissioners had reported that Mr. Kannu Pillai was guilty of corrupt practices and on that account the Commissioners held that he was not entitled to be a voter, and if he was not a voter, he was not entitled to stand as a candidate, and therefore his candidature was invalid. As such, his election was set aside. Upon that setting aside of election, Mr. Kannu Pillai filed an original suit in the District Court for two purposes. It is essential to

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know the scope of that suit to ascertain what was decided in that case. The suit was filed for the following reliefs:

(*a*) a declaration that the report of the Commissioners in Election Petition 1/113 does not contain a finding that the plaintiff has been guilty of any corrupt practice and that he is entitled to have his name retained on the electoral rolls and to stand as a candidate for the Legislative Council;

(*b*) a declaration that the report of the Commissioners in E. P. 1/114, is illegal and ultura vires, that the order of Government passed on the same is invalid, that Mr. Salem is hence not the duly elected member and the plaintiff still continues to be the Member for the Mattancheri constituency; and

(*c*) recovery of damages of Rs. 100 from the defendants. Therefore, the House will note that two simple points alone arose in that suit:—1. whether there was a finding in the report on E.P. 1 of 113 that plaintiff was guilty of corrupt practices, 2. whether the report on E. P. 1 of 114 is illegal or ultravires. The question what are corrupt practices entailing disqualification for membership did not arise in the suit. The finding of the trial court was that the court had no jurisdiction to entertain such a suit. No other question was decided in the suit. Mr. Kannu Pillai filed an appeal in the High Court and the decision of the High Court is reported in 34 Cochin 893. The High Court also held that the Civil Court had no jurisdiction to entertain a suit to set aside a report of the Commissioners appointed by the Government in connection with an election petition. That was the only question decided. The High Court really did not decide in the appeal any other matter. My point is that the only point upon which the decision can be relied upon as an authority is the question whether a civil court has jurisdiction to entertain a suit to review or set aside the report submitted by the Election Commissioners. If in the course of stating reasons, a Judge expressed certain arguments, they are not binding as an authority. In considering the question whether the commissioners have exceeded their jurisdiction in declaring the election void the Judge observed that what is a disqualification for a voter is a disqualification to be a candidate. This refers to a person standing as a candidate. The question of disqualification for continuing to be a member did not arise in the suit and was not decided. Therefore, my submission is that the objection raised by my hon'ble friend upon the ground that there is a decision of the High Court finding that certain corrupt practices entail disqualification for continuing to be a member of the Council is not maintainable at all. In the course of the judgment, a judge may express various opinions. They are.....

Mr. President : Only an *obiter dicta.*

Mr. Paul P. Mampilli *(Advocate-General):* Yes, in legal phraseology, we call it so. That is not binding upon the Government, that is not binding on lower courts or on a bench of the same Court. The only point that is pertinent and that is binding upon the Government as well as upon lower Courts and the same Court is that the civil court has no jurisdiction to entertain a suit on such a matter. No other point has been decided by the High Court. In the circumstances, I submit that the objection raised by the Hon'ble Member is not maintainable.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Can I be permitted to show to the Chair that the position taken up by the learned Advocate-General is hollow and fallacious?

Mr. President : Well, we cannot go on like that. The Hon'ble Member had his say. I give the ruling. When a person is declared by competent authority to have been elected a member of this House, it is not the business of the Chair to go behind that declaration and investigate the legality or otherwise of the election. The Chair is not an election tribunal. Therefore, the Hon'ble Members mentioned are members of this House and the House is properly constituted.

2. Swearing in of new member

Mr. C. R. Iyyunni *(Minister for Revenue):* Hon'ble Minister for Revenue, was sworn in

3. Announcement of Panel of Chairmen

Mr. President: The following Hon'ble Members will be the Panel Chairmen for this session.—

Mr. Paramel Ipe Ipe.
Mr. K. T. Achuthan.

4. Bills assented to by His Highness the Mararaja

Secretary to the Council.—The following Bills have been assented to by His Highness the Maharaja.—

The Cochin Payment of Salaries and Allowances Act (Amendment) Bill.
The Cochin Court Fees Act (Amendment) Bill.

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